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NEW DELHI, WEDNESDAY, JULY 1, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 22nd June 1953

S.R.O. 1288.—Whereas the election of Kanwar Manjit Inder Singh, as a member of the Legislative Assembly of the State of PEPSU, from the Kot Kapura Jaitu constituency of that Assembly (now dissolved), has been called in question by an election duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ishar Singh Chahal, son of Sardar Deva Singh, Chahal, Tehsil Faridkot, District Bhatinda;

Whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Wherefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BARNALA (PEPSU)

— ELECTION PETITION No. 159 OF 1952

Kot Kapura Jaitu Constituency of the Legislative Assembly of the Patiala and East Punjab States Union.

In support of: Jagjit Singh, M.A., LL.B.—*Chairman.*

Shiva Gopal Mathur, B.A., LL.B.—*Member.*

Dalip Singh Jain, M.A., LL.B.—*Member.*

Against: Singh Chahal, son of S. Deva Singh, caste jat sikh, resident of village Faridkot, Tehsil Faridkot, District Bhatinda.

Versus

Kanwar Manjit Inder Singh son of Raja Barjinder Singh, resident of Barnala.

Lal Singh son of Sardar Kishan Singh, Ex-Minister, Pepsu, Patiala.

Jagjit Singh son of Ajmer Singh, resident of Gondara, Tehsil Faridkot.

Tarlochan Singh son of Hazura Singh, resident of Kasam Bhatti, Tehsil Barnala.

Captain Sant Singh son of Bhagwan Singh, resident of Kot Kapura.

Bhawan Chand son of Bishan Dass of Kot Kapura.

Chandit Sat Dev son of Dalip Chand of Jaitu Mandi.

8. Master Mansa Ram son of Nanak Chand of Jaitu Mandi.
9. S. Mengha Singh son of Ram Ditta Mall of Kot Kapura.
10. Sardar Jarnail Singh son of Thaman Singh of Khara, Tehsil Faridkot.
11. S. Janga Singh son of S. Mahan Singh of Burj Harika, Tehsil Faridkot.
12. S. Ranjit Singh son of Gurmukh Singh of Kot Sukhia, Tehsil Faridkot.
13. S. Bhag Singh son of Wazir Singh of Bhokhri, District Bhatinda.
14. S. Parsa Singh son of Rulia Singh of Faridkot.
15. S. Ram Singh son of Sarwan Singh of Harinav, Tehsil Faridkot.
16. Imam Chand son of Mauji Ram of Kot Kapura.
17. S. Roshan Singh son of Prem Singh of Jaitu.
18. Rulia Singh son of Hazara Singh of Bargari, Tehsil Faridkot.
19. Shri Bansi Ram son of Siri Kishan of Kot Kapura.
20. Shri Ram Narain son of Gauri Kant of Kot Kapura.
21. Shri Ladhu Ram son of Girdhari Lal of Kot Kapura.
22. Shri Hira Lal son of Ram Nath of Kot Kapura.
23. S. Gurcharan Singh son of Atma Singh of Gondara, Tehsil Faridkot.
24. Ramoo son of Gopal of Jaitu.
25. S. Raj Singh son of Charat Singh of Bargari, Tehsil Faridkot.
26. S. Sawan Singh son of Punjab Singh of Sandhawan, Tehsil Faridkot.
27. S. Sher Singh son of Mal Singh of Romana Albel Singh, Tehsil Faridkot.
28. Amin Chand son of Chur Singh of Kot Kapura.
29. Amar Nath son of Kanhyaya Lal of Jaitu.
30. Devi Shah son of Ram Nath of Jaitu.
31. Shri Ramji Lal son of Nathu Lal of Jaitu.
32. Shri Krishan Lal son of Jhangi Ram of Jaitu.
33. Shri Amar Nath son of Gokal Chand of Kot Kapura.
34. S. Mehar Singh son of Chur Singh of Tehsil Faridkot.
35. Gurdial Singh son of Hira Singh of Faridkot, Tehsil Faridkot.
36. S. Dalip Singh son of Gajjan Singh of Kachar, Tehsil Faridkot.
37. Shri Mahi Paul son of Mukh Ram of Jaitu.
38. Nirbhai Singh son of Jawahar Singh of Faridkot.
39. S. Sher Singh son of Asa Singh of Jaitu, and
40. Shri Jaswant Rai son of Hardit Singh of Jaitu—*Respondents*.

PRESENT:

S. Isher Singh—*Petitioner*.

JUDGMENT

(PER SHRI S. G. MATHUR)

This is an election petition challenging the election of Kanwar Manjitinder Singh, respondent No. 1 to the unreserved seat of the Legislative Assembly of the Patiala and East Punjab States Union, from the Kot Kapura Jaitu constituency, and to secure an order to declare his election to be void. This was a double member constituency to which the respondent No. 1 was returned for the general seat and S. Ranjit Singh, respondent No. 12, for the reserved seat. S. Isher Singh, the petitioner, has questioned the validity of the election of Kanwar Manjitinder Singh only, and has not asked for a relief for a declaration for the election to be declared wholly void, which would have affected the election of the reserved seat candidate as well.

The petitioner claims himself to be a voter in the Kot Kapura Jaitu constituency for election to the Legislative Assembly of the Patiala and East Punjab States Union, and contends that the election should be declared void because of the improper rejection of the nomination papers of three of the candidates, namely, B. Singh, respondent No. 13, Rulia Singh, respondent No. 18, and Roshan Singh, respondent No. 17, and also because during the election the respondent No. 1 was responsible for a number of corrupt practices and acts of undue influences.

It is pleaded that the nomination paper of Bhag Singh was improperly rejected on the ground that he was an assessor, and that the grounds for rejection of the nomination papers of the respondents Roshan Singh and Rulla Singh that declarations as required by Form 5-A of the Rules of the Representation of the People Act, 1951 were not furnished by the candidates while presenting the nomination papers, were also not sound in law, and it was urged that all these rejections had materially affected the result of the election.

Further allegations are made to the effect that respondent No. 1 had procured persons to cast votes in the name of others, living or dead, and to personate for them falsely at the polls; that he had started free kitchens for voters of the constituency and tempted voters by giving meat and wine freely to them in various villages as noted in Annexure B attached to the petition; that he along with his brother the Raja of Faridkot and other agents had threatened the Jat voters at various places for ex-communication and boycott in case they refrained from voting in his favour and at some places even threats of murder were given to voters; that he had engaged a number of cars on the polling days in order to convey voters to and from the polling stations so much so that S. Puran Singh, one of the canvassers and agents, was actually found taking voters in a trolley attached to a tractor to the polling station on the polling day; and that the return of election expenses filed by him after election was false in material particulars as per details given in the list marked as Annexure H.

The respondent No. 1 denied the petitioner to be a voter in the constituency was alleged by him, and contended that the orders of the Returning Officer rejecting the nomination papers of respondents Nos. 13, 17 and 18, against which objections have been taken by the petitioner, were perfectly in order and proper in law, and the rejection of those papers had not in any way affected the result of the election. A plea was further taken to the effect that as the petitioner had confined his relief for a declaration in respect of the election of respondent No. 1 only and had not claimed a declaration that the entire election was wholly void, the objections as regards the rejection of the nomination papers of the respondents Nos. 13, 17 and 18, were not entertainable in law. It is also contended that the petition and the lists of particulars were not properly verified and consequently all the allegations contained in them should be struck off. It was further contended that one S. Bhag Singh of village Amargarh was one of the candidates for election and as he was not impleaded as one of the respondents, the petition was bad in law and liable to be thrown out on account of non-joinder of necessary parties.

It may be noted that one S. Bhag Singh is impleaded in the case as respondent No. 13, but it is contended that this Bhag Singh was not the candidate for the election and that the one who was really the candidate had been left out from being impleaded as a respondent.

All the allegations of corrupt and illegal practices enumerated in the body of the petition and the Annexures A to H, attached to it, are vehemently denied and contested. The contesting respondent urged that the election was conducted in quite a free and straight-forward manner on his behalf, and that all the allegations introduced in the petition against him were quite false and uncalled for. He contended that the petitioner was in fact a mere dummy figure and that the real person who was behind the scene was Gvani Zail Singh respondent No. 2, who instead of coming himself in the open had put forward his own man, the petitioner, for purposes of this petition, and had introduced all sorts of false allegations about corrupt and illegal practices.

Proceedings against the respondents Nos. 2 to 14 were recorded ex parte.

From the pleadings, arising out of the petition, the lists attached to it as Annexures, and the written statement filed by the respondent No. 1, the following issues were framed:—

1. Whether the petitioner was a voter in Kot Kapura-Jaitu constituency for election to the Legislative Assembly of the Patiala and East Punjab States Union?
2. Whether one S. Bhag Singh of village Amargarh other than the respondent No. 13 was a duly nominated candidate from Kot Kapura-Jaitu constituency, and due to his non joinder as a party the petition is liable to be dismissed?
3. Whether S. Bhag Singh respondent No. 13 was a candidate from Kot Kapura-Jaitu constituency?

4. Whether the order of the Returning Officer rejecting the nomination papers of the respondent No. 13. on the ground that he was an assessor, is improper and has materially affected the result of the election?
5. Whether the nomination papers of Sardars Roshan Singh and Rulia Singh respondents Nos. 17 and 18 respectively, were improperly rejected by the Returning Officer and has that materially affected the result of the election?
6. Whether issues Nos. 3 to 5 cannot be tried as the petitioner did not claim a declaration that the election was wholly void?
7. Whether Arjan Singh, a worker and agent of the respondent No. 1, procured a ballot paper in the name of a deceased person, named Joginder Singh, and if so, what is its effect?
8. Whether Jagraj Singh procured a ballot paper in the name of his deceased father, Sarwan Singh, at the instance of S. Dial Singh, an agent of the respondent No. 1, and if so, what is its effect?
9. Whether any corrupt practice of 'treating' was committed at the instance and expense of the respondent No. 1 by running free kitchen as under:—
 - (i) at village Jaitu by S. Santa Singh, an alleged agent of the respondent No. 1 from 10th to 24th January, 1952;
 - (ii) at village Bargari by S. Jangir Singh, an alleged agent of the respondent No. 1 from 18th to 25th of January 1952.
 - (iii) at Kot Kapura city by S. Dalip Singh, a clerk of the private estate of His Highness Raja Harinder Singh of Faridkot, an alleged agent of respondent No. 1, from 15th to 21st January, 1952; and
 - (iv) at village Matta by S. Chanda Singh, Lamberdar, an alleged agent of the respondent No. 1, from 16th to 21st January, 1952?
10. Whether the corrupt practices of undue influence were committed by the respondent No. 1 and his agents as under:—
 - (a) on 30th December 1951 at villages Panjgrain, Kot Kapura and Bargari, on 1st January 1952 at village Khara and on 10th December 1951 at villages Wander, Jatana and Maur the respondent No. 1 delivered speeches threatening voters with evil consequences and boycott in case they did not vote for him and further made them take oaths in Gurdwaras that they would only vote for him;
 - (b) a day before the polling, Santa Singh and Kehar Singh, alleged to have been hired by the peons of the respondent No. 1, threatened Mazhabi voters of villages Sarwan and Panjgrain with death, in case they would not vote for the respondent No. 1.
 - (c) two or three days before the polling started Buta Singh, Kirpal Singh, Sucha Singh and Sadhu Singh, alleged workers of the respondent No. 1, coerced Mazhabis of village Niamwala to vote for respondent No. 1 on threat of being murdered?
11. Whether the respondent No. 1 and his agents hired, on the polling days, the motor vehicles, mentioned in para 1 of Annexure 'E', in order to carry voters to and from the polling stations?
12. Whether Puran Singh, Lamberdar, an alleged agent of the respondent No. 1 took about 25 voters in the trolley attached to his Ferguson Tractor to the polling station on the polling days, and if so, what is its effect?
13. Whether the return of election expenses lodged by the respondent No. 1 was false in material particulars, as alleged in Annexure H, and if so, what is its effect?
14. Whether the petition and the lists of particulars regarding corrupt practices have not been properly verified, if so, what is its effect?
15. To what relief, if any, the petitioner is entitled?

FINDINGS

Issue No. 1.—It cannot be denied that the petitioner held a position of a voter in the Kot Kapura-Jaitu constituency and as such he possessed a right to question

the election under section 81 of the Representation of the People Act, 1951. An extract from the list of voters for the Legislative Assembly of the Patiala and East Punjab States Union was produced and contains the name of S. Isher Singh, the petitioner, at serial number 127 as a voter in village Chahal, police-station Kot Kapura. The said list conclusively establishes the position of the petitioner as a voter in the constituency in which the election has taken place, and by virtue of his occupying the position of a voter he had certainly got a right to file the election petition to challenge the validity of the election. The issue is, therefore, decided in the affirmative.

Issue Nos. 2 and 3.—The petitioner has impleaded S. Bhag Singh, describing him as a son of Wazir Singh of Bhokri District Bhatinda, as one of the respondents in the case recognising him as a candidate who had presented his nomination paper for election before the Returning Officer, but whose paper was rejected on scrutiny. A plea is raised on behalf of the contesting respondent that S. Bhag Singh who in fact had filed his nomination paper during the election proceedings was not the one who is impleaded in the list of the respondents, but was another person and a resident of Amargarh, and that as he was not impleaded in the case, the petition was bad and suffered from the defect of non joinder of a necessary party.

The allegation made by the respondent, however, carries no force. S. Bhag Singh, who figures as respondent No. 12 in the case has been examined by the petitioner as P.W. 3 and he swears that the nomination paper (Serial No. 311), Ex. 3, which was the subject of scrutiny before the Returning Officer, was in fact filed by him for Kot Kapura Jaitu constituency reserved seat, and he identified his signatures also on the nomination paper and on the declaration made thereon. He has also identified his signature on the reverse of the notice Ex. 2, which was issued to him as a respondent in this case intimating to him the date fixed for the hearing, and requiring him to appear and to take such steps as he might deem proper in the case. It cannot thus be doubted that S. Bhag Singh, who has been examined as P.W. 3, is the very person who had filed his nomination papers before the Returning Officer, and who is now rightly impleaded as a respondent in this case. The allegation, that there was some Bhag Singh other than the respondent No. 13, who had filed his nomination paper, finds no support whatsoever from the record. S. Bhag Singh, the respondent No. 13, is son of Wazir Singh of village Amargarh, but in the description given against his name as regards his residence, instead of Amargarh a place Bhokri is noted down. It appears from his statement that Bhokri is a village which was availed of as a polling station for the voters of his village Amargarh, and his village is only at a distance of nearly one mile from there. It is not unlikely that village 'Bhokri' happens to be mentioned against his name, in the list of respondents, by mistake because of its nearness to Amargarh and of its being made use of as a polling station for voters of Amargarh. Thus the mistake has given an occasion to the respondent No. 1 to introduce a plea that the real Bhag Singh, who was in fact a candidate, was some other person and not the one who was impleaded in the petition. We are of the opinion that the right person has been impleaded in the petition and the plea that some other Bhag Singh was the proper person, who should have been impleaded, is baseless and without any foundation.

No question of non joinder of parties arises in the case at all as the proper person has been impleaded. S. Bhag Singh respondent No. 13 was certainly a candidate from Kot Kapura Jaitu constituency as is pleaded by the petitioner and the plea on the part of respondent to challenge the petition on the ground of non joinder of parties carries no force. Issue No. 2 is decided against the respondent No. 1, and issue No. 3 is decided in favour of the petitioner.

Issue No. 4.—The nomination paper of S. Bhag Singh, the respondent No. 12 was rejected by the Returning Officer at the time of the scrutiny on an objection taken against him on behalf of one of the rival candidates S. Karnail Singh, the respondent No. 10, on the ground that he was occupying the position of an assessor, as in his view, such a person was not eligible for election to the membership of the legislative assembly. The respondent contended that the position of an assessor was to be treated as of one holding an office of profit and amounted to a disqualification under Article 191(a) of the Constitution of India, and as such the order passed by the Returning Officer was quite valid in law.

The point that S. Bhag Singh was occupying the position of an assessor, is not much disputed on behalf of the respondent, and S. Bhag Singh as P.W. 3 has also stated that on 24th November, 1951, the day on which the nomination paper was filed, he was holding the position of an assessor in the Sessions Court, Bhatinda, and that he had actually acted as such on two occasions. The main point for

consideration now is whether his position as an assessor had caused the disqualification for him to seek an election in the last general elections. The law relating to the point in question is given in Article 191 of the Constitution of India. Article 191 lays down that "A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of the State (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder....." The question arises whether the position of an assessor amounts to holding an office of profit under the Government of the State as is contemplated by the said Article.

On giving our full thought to the point in question we are definitely of the opinion that an assessor does not fall within the purview of this Article. The disqualification enumerated in this Article presumes that the person concerned was holding an office under the Government of the State by virtue of which he was actually drawing some profit for himself. But the position of an assessor is not such. Under the scheme of the Code of Criminal Procedure, as appears from a perusal of Sections 319 and 320, it is evident that a person who is called to a court of Sessions to act as an assessor attends the court with a sense of responsibility to discharge a duty which the law has laid upon him as a citizen of the land. Section 319 notes down that all male members between the ages 21 and 60 shall, except those who are exempted by law, be liable to serve as jurors and assessors at any trial held within the district in which they reside, and section 320 enumerates a few classes of persons who have been exempted from such a liability. Thus their appearance in court as assessor arises out of a statutory liability that is laid on all the citizens of the territory within the jurisdiction of a court of Sessions, and no one can refuse to obey the order unless exempted by law. It is evident that no profits are attached to the position of an assessor, nor even the opinion which he offers to a Sessions Judge at the end of the trial has any binding force. A Sessions Judge is free to form an opinion independently of the opinion of assessors. It is obvious that an assessor is called merely to give some assistance to the State in the administration of justice in his capacity as a citizen, and not by virtue of his holding any office. As was observed in the *Gazette of India (Extraordinary)* No. 6, dated, 6th January, 1953, which has discussed the position of an assessor very elaborately and thoroughly, "the word 'hold' connotes "some volition and choice and has no application to the case of an involuntary act of a person imposed upon him under the law of the land. The assessor is merely subject to the statutory liability of being asked to do the duty of assisting the Sessions Judge in a Sessions trial in a particular area of which he is a resident". Thus he cannot be said to attend the court by virtue of his holding any office, but simply in consequence of a liability which has been imposed upon him by the Code of Criminal Procedure. Besides it, it is also to be kept in mind that no benefits of any kind what-so-ever are to be enjoyed by an assessor. He is neither paid any fees nor allowance nor remuneration nor does he derive any material gain or special powers or privileges by virtue of his occupying such a position and consequently to regard him to be holding an office of profit does not appear proper. The view expressed in the commentary of the Constitution of India by Basu at page 346 implies that the office of profit conveys the sense of an employment with fees and emoluments attached to it, which cannot be made applicable in the case of an assessor. We are of the opinion that if one occupies the position of an assessor it would not amount to holding by him an office of profit within the meaning of Article 191 of the Constitution of India and such a position would not disqualify him from claiming a seat for the Legislative Assembly of the State. We had also occasion to discuss this point in another election petition (No. 127 Balbir Singh Vs. Arjan Singh and others) and there also we had come to the same conclusion.

The order of the Returning Officer rejecting the nomination paper of Shri Bhag Singh on the aforesaid ground was, therefore, improper and cannot be maintained, as is urged on behalf of the petitioner.

S. Bhag Singh could not contest the election in consequence of the improper rejection of his nomination paper and as stated by him, as P.W. 3, he would have surely contested the election had he been given a chance for it. It cannot be doubted that the rejection of his paper has affected the result of the election very materially. No one can predict as to what the entire picture of the final result would have been had he remained in the field and secured votes in his favour. In any case where a nomination paper is improperly rejected a very strong presumption arises that it has materially affected the result of the election. Opinions cannot be formed on the basis of speculations and conjectures as to

whether the successful candidates, the respondents Nos. 1 and 13, would have retained their position by securing the highest number of votes as against the other candidates in case the rejected candidate would have been given an opportunity to fight the election. The point has come up for discussion in a number of cases and it is now almost a settled law that when any nomination paper is improperly rejected there is a very strong presumption that the result of the election has been materially affected. It may be, that such a presumption is rebuttable, but it needs a very strong evidence to adopt an opposite view. The case reported in the *Gazette of India (Extraordinary)* No. 8, dated January 8, 1953, is one of the cases out of many others, which also adopts the same view and with which we entirely agree. We are consequently of the opinion that in the present case the rejection of the nomination paper of S. Bhag Singh has materially affected the result of the election as is contended on behalf of the petitioner. The respondent No. 1 has also admitted that the order of rejection of the nomination paper of Shri Bhag Singh was improper and has materially affected the result of the election. The issue is decided in favour of the petitioner.

Issue No. 5.—Roshan Singh respondent No. 17 had appointed one Bhagwant Rai, and not himself, to act as his election agent during the election. S. Rulia Singh respondent No. 18 had appointed one Gurcharan Singh to work for him as his election agent during the election. Both of them had failed to attach declarations about these appointments as required by Form 5-A of the Representation of the People (Conduct of election and election petitions) Rules, 1951, Part II Chapter 1, rule 11-A. On the day of scrutiny the Returning Officer passed orders rejecting both these nomination papers, on the ground that the papers were not accompanied by the declarations as required by Form 5-A.

It is pleaded by the petitioner that the election agents of Sardars Rulia Singh and Roshan Singh, namely, S. Gurcharan Singh and Shree Bhagwant Rai were actually present before the Returning Officer at the time of the scrutiny of the nomination papers, and they had presented the declarations in Form 5-A before him, and, therefore, the orders of rejection passed by the Returning Officer on these nomination papers were quite illegal. Further on it was contended that even if the declarations in Form 5-A were not attached that was not a material defect and could be easily ignored. The respondent on the other hand urged that the declarations in Form 5-A were essential to be attached to the nomination papers and without them the candidates could not be deemed to be duly nominated under law, and that the orders of rejection passed on the nomination papers of these candidates were quite in order.

The relevant provisions of law in relation to the filing of the declarations appear in Section 40 of the Representation of the People Act, 1951, and rule 11-A (Chapter II Part 1 of the Representation of the People (Conduct of election and election petitions) Rules, 1951, and the Form 5-A as given in Schedule First to the aforesaid rules. These provisions lay down a procedure which is required of a candidate while appointing a person as his election agent for election purposes, and these provisions undoubtedly make it incumbent on a candidate to attach a declaration in Form 5-A, in a case where he appoints some one else, besides himself, as his election agent. Section 40 lays down: "(1) every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of Section 33 or under that sub-section read with sub-section (4) of Section 39 as the case may be, appoint in writing either himself or someone other person to be his election agent; (2) when a candidate appoints some person other than himself to be his election agent he shall obtain in writing the acceptance by such person of the office of such election agent." Rule 11-A notes down that when a candidate appoints in the manner provided by Section 40, some person other than himself to be his election agent such appointment shall be in Form 5-A, and the Form 5-A prescribes the period for which the appointment is to remain in force, which is to last from the date of appointment until the return and declaration respecting election expenses had been made by him, and it contains also an agreement to re-imburse the said agent all payments and disbursements lawfully made by him in the course of his duties as his election agent, and to pay him remuneration also for his services. Besides such terms agreed to on the part of the candidate, the Form contains at the end of it, a declaration of the acceptance of the above appointment by the election agent as well. This form is required in case the candidate employs some one else and not himself to act as his election agent. Rule 11-A is emphatic on the point that when a candidate appoints some person other than himself to be his election agent, as provided by Section 40, such appointment shall be in Form 5-A. By the declaration as required by Form 5-A the candidate fixes the period for which the election agent is to work for him, and takes a responsibility upon him to re-imburse him the

amount which he might have spent in the discharge of his duties as an election agent, and it also requires a declaration of acceptance of his duties as an election agent on the part of the agent as well. Such a declaration is obviously an important and a necessary one

Section 33(3) further makes it compulsory that every nomination paper delivered under Sub-section (1) shall have to be accompanied by declarations which are prescribed under law, and that no candidate is to be deemed to be duly nominated unless such declarations are delivered along with the nomination paper. This provision leaves no scope for doubt that the Legislature did intend a declaration as required by Form 5-A to be delivered to the Returning Officer along with the nomination paper. The declaration required by Form 5-A is the one which has been prescribed by law, and Section 33(3) makes it incumbent upon a candidate to deliver it along with the nomination paper, and as is laid down in the said sub-section unless the nomination paper is accompanied by such a declaration the candidate is not to be considered to be a duly nominated one. We are of opinion that the declaration as given in Form 5-A was a necessary document to be delivered to the Returning Officer when the nomination paper was presented to him, and as it was not presented, the Returning Officer was perfectly right in rejecting the nomination paper.

The petitioner had put forward allegations in the petition that S. Gurcharan Singh and Shree Bhagwant Rai, the nominated election agents of S. Rulla Singh and Roshan Singh respectively were actually present before the Returning Officer on the day of scrutiny of the nomination papers, and they had presented these declarations in Form 5-A before him, but there is no evidence whatsoever to substantiate the fact that such declarations were actually presented before the Returning Officer as is alleged. None of the two election agents was examined to prove the fact of the alleged presentation, and the allegation obviously is not true and is not supported by any evidence. In view of the opinion which we have formed that declarations in Form 5-A were necessary to be delivered along with the nomination papers which was not done in the case of the two candidates, the order of the Returning Officer rejecting their nomination papers was quite proper in law. The petitioner could not have any ground of grievance against the election on the basis of the said rejection orders. The issue is decided against the petitioner

Issue No. 6.—A plea was taken by the respondent to the effect that as the petitioner had not claimed a declaration that the election was wholly void and had confined his relief to a declaration that the election of the respondent No. 1 only was void, the points raised by paragraphs 4 to 6 of the petition which are covered by issues Nos. 3 to 5 were not entertainable in law. But the point carries no force. The points raised by issues Nos. 3 to 5 are material for determination of the point whether the orders of rejection of the nomination papers of the candidates by the Returning Officer were proper or otherwise with a view to determine the validity of the election of the respondent No. 1. The mere fact that no relief is claimed for a declaration that the whole election be held void would not debar the petitioner from raising the points involved in issues Nos. 3 to 5 against the respondent No. 1. The issue is decided against the respondent.

Issue No. 7.—An allegation was made against the respondent No. 1 that he had secured persons to personate for others who were dead and as an instance thereof it has been alleged in Annexure A that one Arjan Singh had personated for one Joginder Singh who had died earlier and cast a vote for him. But not a single witness is examined to substantiate this story. Neither Arjan Singh nor anybody else has been examined to state about the said allegation. The issue is decided against the petitioner.

Issue No. 8.—Another such instance given was that one Jagraj Singh had procured a ballot paper in the name of his deceased father Sarwan Singh at the instance of S. Dial Singh A.D.C. to His Highness the Raja Sahib of Faridkot, who was the brother and the chief helper of the respondent No. 1. It appears from the statement of Jag Raj Singh P.W. 7 that his father had died eight or nine days before the Polling and that he had actually entered the polling station for purposes of casting a vote in the name of his father, but as he was a mere lad of 16 years of age, a suspicion arose and he was taken under arrest and prosecuted. He, however, does not implicate the respondent No. 1 or any worker on his behalf as the person who had tempted him to go to the polling booth. In the absence of any evidence we cannot throw the responsibility for his act on the respondent No. 1. The issue is decided against the petitioner.

Issues Nos. 9(i) (h) (iii) (iv).—Further allegations are made that the respondent No. 1 had carried on free kitchens in villages Jaitu, Bargari, Kot Kapura city and Matta and other places also where meat and wine were freely served to the voters at the instance of respondent No. 1 who himself had paid visits to these kitchens to see to the proper arrangement of serving to the voters. But not a single witness has been examined to speak about the alleged free kitchens at any of the villages mentioned in the list Annexure B, attached with the petition. All these allegations that kitchens were freely working at the instance of the respondent at different villages remain unsupported on the record. One Jangir Singh P.W. 8 is examined in relation to the point of the free kitchens, but he also says nothing to support the petitioner. What he says simply is that his house was taken by the respondent No. 1 on rent for the election days and that he had charged him Rs. 10 for rent which was paid to him just at the end of the polling, when the house was vacated. He denied that any kitchen was run by the respondent No. 1 in his house or that liquor or meat were distributed to any persons within his knowledge. This statement instead of supporting the petitioner's case rather lends strength to the respondent's objection. The issue is, therefore, decided against the petitioner.

Issues Nos. 10(a), (b) and (c).—Allegations were introduced in para. 10 of the petition and the list Annexure C attached to it that respondent No. 1 had exercised undue influence upon the voters by resorting to threats of evil consequences to them in case they did not vote for him. It was added that in villages Pinjagrain, Kot Kapura, Bargari, Wandatt Jattan and Maur, the respondent No. 1 had delivered speeches threatening the jat voters and had made them take oaths in Gurdwaras and further that certain workers of his had coerced mazhabis of villages Niamwala to vote for him on the threat of being murdered, and that a day before the polling two agents of his had also uttered such threats to the voters of some villages. All these allegations, however, remain on paper only, without a single witness to be called to substantiate them. In absence of evidence, the issue is decided against the petitioner.

Issues No. 11 and 12.—A plea was further taken accusing the respondent No. 1 and his agents for hiring motor vehicles on the polling days to carry voters from place to place and that his agent, Puran Singh lamberdar, was actually found, carrying a number of voters in a trolley attached to a tractor. Again we find no evidence whatsoever in support of these allegations. These issues are also decided against the petitioner.

Issue No. 13.—No attempt has been made to substantiate the allegation that the return of election expenses was false in respect of any particulars mentioned in it. This plea also remains unsupported by evidence. The issue is decided against the petitioner.

Issue No. 14.—The respondent No. 1 raised an objection of a general type against the verification made by the petitioner at the end of the petition, and the lists of the particulars attached to it, as Annexures, without specifying as to in what particular respect these verifications were to be taken faulty. If the respondent was serious in his objection he ought to have taken pains to point out the particular defects in respect of each of these verifications, which the petitioner had put on the petition and the Annexure A to H separately. The objection against verifications is of too general a type, and does not specify the points on which each one of them was to be challenged. The words in which the verifications are made purport to verify the contents of the papers on which the verifications are put as being true within the petitioner's personal knowledge and also on information received by him which he believed to be true, which is a common form of verifications. We are of opinion that the objection in relation to verifications is not tenable, and the petition cannot be thrown off on the ground of their being defective. The issue is decided against the respondent.

Issue No 15.—In view of the findings given on issue Nos. 1 and 4, we find that the petitioner was in fact a voter in the constituency and thus had a right to challenge the election and further that the order of rejection of the nomination paper of S. Bhag Singh on the ground of his occupying the position of an assessor was improper, and that it had materially affected the result of the election.

The improper rejection of the nomination paper of S. Bhag Singh affected the election not only that of Kanwar Manjit Inder Singh, the respondent No. 1, but that of the reserved seat candidate S. Arjan Singh as well. No doubt in the present case the petitioner has not made any prayer for declaring the election to be wholly void, but his relief is only for the setting aside of the election of the respondent No. 1. We, however, find that the result of the rejection of the

nomination paper was to affect not only the election of the respondent No. 1, but also the election of the other successful candidate, S. Ranjit Singh respondent No. 12. It is to be noted that S. Bhag Singh whose nomination paper is rejected was a member of the Scheduled caste as is evident from the nomination paper Ex. 3 itself, and as such he was evidently interested chiefly for contesting the reserved seat intended for the scheduled caste candidates. It is true that no relief is prayed against the respondent No. 12, but that cannot prove an obstacle in the way of the Tribunal to pass suitable orders which the facts of the case may require. In the present circumstances the election has to be declared to be wholly void as the rejection of the nomination paper affects the election not only of the respondent No. 1, but of the respondent No. 12 as well. As a result, we accept the petition and set aside the elections both of Kanwar Majit Inder Singh respondent No. 1 and Ranjit Singh respondent No. 12 declaring the election from Kot Kapura-Jaitu constituency, to be wholly void.

As for costs we find that the petitioner himself has been quite luke-warm in the conduct of the case. At one stage he even applied for the withdrawal of the petition, though later on he again came forward with an application that he would like to continue with the election petition. As the subsequent application was submitted before the application for withdrawal had been granted, the petitioner was allowed to continue prosecuting the election petition. He had alleged quite a large number of illegal and corrupt practices in the petition but he in fact took no pains to substantiate any of them. Either these allegations of corrupt practices were baseless and false, or he had purposely held himself back from calling witnesses and producing them for reasons best known to him. Under the circumstances we do not find it proper to allow him any costs in the case, and order that the costs shall be borne by the parties themselves.

Pronounced this day, the 28th May, 1953, in open court.

I agree.

(Sd.) JAGJIT SINGH, *Chairman*.

(Sd.) DALIP SINGH JAIN, *Member*.

(Sd.) SHIVA GOPAL MATHUR, *Member*.

[No. 19/159/52-Elec. III/9748.]

By order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*